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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAURA HEINEMANN,

Defendant-cross-plaintiff -
Appellant,

v.

COMPUTER ASSOCIATES
INTERNATIONAL, INC., a New York
corporation,

Plaintiff-cross-defendant -
Appellee,

v.

ANDREW L. RICHARDS; et al.,

Cross-defendants - Appellees.

No. 04-56234

D.C. No. CV-03-04924-R

MEMORANDUM^{*}

LAURA HEINEMANN,

Defendant-counter-claimant -
Appellee,

v.

No. 04-56375

D.C. No. CV-03-04924-R

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

COMPUTER ASSOCIATES
INTERNATIONAL, INC., a New York
corporation,

Plaintiff-cross-defendant -
Appellant,

v.

ANDREW L. RICHARDS; et al.,

Cross-defendants.

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted February 15, 2006
Pasadena, California

Before: CANBY, NOONAN, and KLEINFELD, Circuit Judges.

I.

Laura Heinemann appeals from the district court's grant of Computer Associates' motion for summary judgment on Heinemann's claims of retaliation in violation of Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act (FEHA), California Labor Code § 1102.5, and public policy. We review the district court's grant of summary judgment *de novo*. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995).

On review of a grant of summary judgment, we must view the evidence in the light most favorable to Heinemann, and bear in mind that this court requires the non-moving party to produce “very little evidence” to overcome a motion for summary judgment in a discrimination case. *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1124 (9th Cir. 2000).

To establish a prima facie case of retaliation, Heinemann must demonstrate that she engaged in a protected activity, that her employer subjected her to an adverse employment action, and that there was a causal link between the protected activity and the employer’s adverse action. *See Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 506 (9th Cir. 2000) (Title VII); *Strother v. S. Cal. Permanente Med. Group*, 79 F.3d 859, 868 (9th Cir. 1996) (FEHA); *Love v. Motion Industries, Inc.*, 309 F. Supp. 2d 1128, 1134 (N.D. Cal. 2004) (California Labor Code § 1102.5).

There is no dispute as to the first two factors. Heinemann engaged in a protected activity when she made a complaint to the California Department of Fair Employment and Housing (DFEH). *See McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1125 n.19 (9th Cir. 2004). Heinemann was subsequently terminated by Computer Associates, which constitutes an adverse employment action. *See Thomas v. City of Beaverton*, 379 F.3d 802, 811 (9th Cir. 2004). “Causation

sufficient to establish the third element of the prima facie case may be inferred from circumstantial evidence, such as the employer's knowledge that the plaintiff engaged in protected activities and the proximity in time between the protected action and the allegedly retaliatory employment decision.” *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987).

Heinemann established that Computer Associates became aware of her complaint to DFEH approximately one month prior to her termination. This temporal proximity alone is sufficient to establish a genuine issue of material fact as to whether a causal link exists. *City of Beaverton*, 379 F.3d at 812. Heinemann also presented genuine issues of material fact regarding whether at least some of the decision makers who terminated her were aware of her protected activity. *See Hernandez v. Spacelabs Med., Inc.*, 343 F.3d 1107, 1114-1115 (9th Cir. 2003); *Bergene v. Salt River Project Agr. Imp. & Power Dist.*, 272 F.3d 1136, 1141 (9th Cir. 2001).

Once a prima facie case of retaliation is established, the burden shifts to the defendant to articulate a legitimate non-discriminatory reason for the termination. *Strother*, 79 F.3d at 970. It then shifts back to the plaintiff to demonstrate that the asserted reason was pretext for retaliation. *Id.* Computer Associates' proffered a legitimate non-discriminatory reason for terminating Heinemann, which was that

Computer Associates terminated Heinemann after determining that she had improperly copied and pasted a client's signature on a sales contract, which had been obtained from a previous sale contract rather than obtained as the result of the negotiations over the current contract. This determination was made after an internal investigation, which was led by employees of Computer Associates who were unaware of Heinemann's complaint to DFEH. Contrary to Judge Kleinfeld's assertion in dissent that Computer Associates offered overwhelming evidence to prove the Heinemann had forged the signature on the client sales contract, the only overwhelming evidence offered was that the signature on the sales contract was inauthentic. A genuine issue of material fact exists as to whether Heinemann was the person who copied and pasted the signature on to the current sales contract.

Heinemann also presented genuine issues of material fact to dispute this proffered reason by offering evidence that the individuals involved in the ultimate decision to terminate her may have acted with retaliatory animus. Her evidence is enough to establish pretext because "the same evidence can be used to establish a prima facie case and . . . create a genuine issue regarding whether the employer's explanations are pretextual." *Id.* Even if, as Judge Kleinfeld suggests, the evidence established that Heinemann had forged the signature on the sales contract, a genuine issue of material fact exists as to whether Heinemann would have been

terminated if she had not participated in the protected activity. Heinemann presented evidence that Computer Associates might have otherwise taken into account her length of service or the revenue that she had previously generated for Computer Associates.

We therefore hold that, with the evidence viewed in the light most favorable to Heinemann, the district court erred in granting summary judgment on the retaliation claim.

II.

Heinemann also appeals the district court's denial of her motion to compel production of documents and the district court's decision not to allow further discovery pursuant to Rule 56(f). The motion to compel production of documents is reviewed for abuse of discretion. *Lobatz v. U.S. W. Cellular of California, Inc.*, 222 F.3d 1142, 1147 (9th Cir. 2000). The district court did not abuse its discretion because Heinemann did not establish the "actual and substantial prejudice" she would suffer without such discovery. *Sablan v. Dep't of Finance*, 856 F.2d 1317, 1321 (9th Cir. 1988). The district court's denial of Heinemann's motion to compel is affirmed.

In light of our action reversing the district court's grant of Computer Associates' motion for summary judgment on Heinemann's retaliation claims, the

Rule 56(f) motion requesting a continuance to permit additional discovery before the district court ruled on Computer Associates' motion for summary judgment is moot.

III.

Computer Associates cross appeals the district court's grant of Heinemann's motion for summary judgment on Computer Associates' claims against Heinemann for breach of contract, misappropriation of trade secrets, and conversion.

Computer Associates has established genuine issues of material fact to support the elements of a breach of contract claim. *Reichert v. General Ins. Co.*, 68 Cal.2d 822, 830 (1968). A reasonable trier of fact could find that an employment contract existed requiring Heinemann to return all property to Computer Associates upon her termination, that Heinemann failed to return all property, and that Computer Associates suffered damages.

Computer Associates also put forward sufficient evidence to establish that the elements of conversion were met. *Farmers Ins. Exch. v. Zerin*, 53 Cal. App. 4th 445, 451 (Cal. Ct. App. 1997). Computer Associates owned a laptop that Heinemann improperly possessed after her termination and Computer Associates suffered damages. Heinemann's affirmative defenses of the doctrine of illegality, doctrine of unclean hands, and California Civil Code § 47 involve disputed facts.

We reverse the district court's grant of summary judgment for Heinemann as to the claims for breach of contract and conversion.

We affirm the district court's grant of summary judgment for Heinemann on Computer Associates' claim that Heinemann misappropriated trade secrets because Computer Associates failed to describe the trade secrets with any "reasonable particularity." *Advanced Modular Sputtering, Inc. v. Superior Court*, 132 Cal. App. 4th 826, 836 (Cal. Ct. App. 2005).

Finally, Heinemann's claim that Computer Associates failed to calculate damages as required by FRCP 26 and, as a result, that all claims against her are barred under FRCP 37 is without merit.

REVERSED in part, AFFIRMED in part, and REMANDED. Each party shall bear their own costs.